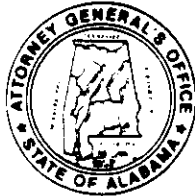


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84-00213



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Hon. Robert L. Hodges
Circuit Judge
Thirty-Eight Judicial Circuit
Room 302, Courthouse
Scottsboro, Alabama 35768

Prisons and Prisoners-
Sentences-Good Time Law

The provisions of Section
14-9-41, Code of Alabama
1975 do not apply to persons
convicted of misdemeanors and
not sentenced to hard labor.

Dear Judge Hodges:

The Attorney General is in receipt of your request for an opinion dated February 15, 1984 wherein you posed the following question:

Considering §§14-9-41, 13A-5-2 and 13A-5-7 Code of Alabama 1975, Does the "incentive good time law" apply even when a misdemeanant is not sentenced to hard labor for the county?

Section 14-9-41(a) Code of Alabama 1975 provides:

Each prisoner who shall hereafter be convicted of any offense against the laws of the State of Alabama and is confined, in execution of the judgment of sentence upon any conviction, in the penitentiary or at hard labor for the county or in any municipal jail for a definite or indefinite term, other than for life, whose record of conduct shows that he has faithfully observed the rules for a period of time to be specified by this article may be entitled to earn a deduction from the term of his sentence as follows:...

The Alabama Correctional Incentive Time Act as codified in §14-9-40 et. seq., is very specific as to which persons are entitled to receive a deduction from their sentence for correctional incentive time. Section 14-9-41 specifies that any person convicted of any offense against the laws of the State and who is sentenced to the penitentiary may receive correctional incentive time. Those persons who have been convicted of any offense against the laws of the State of Alabama and who is confined in a municipal jail for either a definite or indeterminate term is entitled to the receipt of correctional incentive time. Those persons who have received a life sentence are not entitled to the receipt of correctional incentive time. Those persons who are sentenced to hard labor for the county are entitled to receipt of correctional incentive time. The statute is plain and unambiguous in that it excludes persons sentenced to the county jail other than a sentence of hard labor. A statute that is clear and unambiguous is one "having a meaning that is not contradicted by other language in the same Act". See generally Sutherland Statutory Construction, §46.04 (3rd. Ed. Rev. 1972).

In your request for an opinion you noted the case of Thompson v. State, 97 So.258 (1923). In that case the Court of Appeals noted the distinction between a sentence to imprisonment and a sentence to hard labor. This distinction is particularly pointed out in reference to a sentence to a county jail. The Court held:

The distinction between "imprisonment" and "hard labor" for the county is recognized in §7620 of the Code of 1907, wherein imprisonment in the penitentiary expressly includes hard labor for the State, but "imprisonment" and "hard labor" for the county are separate and distinct and neither includes the other. Thompson, supra. at 260.

The same distinction cited in Thompson, supra, is still present in the Alabama law. In §13A-5-7(a) sentences for misdemeanors are still provided to include imprisonment in the county jail or to a definite term of hard labor for the county. It is the opinion of the Attorney General that the distinction cited in Thompson, supra, is still valid.

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In light of the clear and unambiguous nature of §14-9-41 and the distinction between a sentence of imprisonment and a sentence to a term of hard labor it is the opinion of the Attorney General that those persons who have been convicted of a misdemeanor and have received a sentence of other than hard labor are not entitled to receive a deduction from their sentence pursuant to the Alabama Correctional Incentive Time Act.

We sincerely hope that your question has been fully and completely answered and if we may provide you with any further information please feel free to contact this office at any time.

Sincerely yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY:



RICHARD N. MEADOWS
ASSISTANT ATTORNEY GENERAL